

FINAL STATEMENT OF REASONS

Public Resources Code (PRC) Sections 42010 through 42024 govern Recycling Market Development Zones. Section 17930 et seq., of Title 14, Division 7, Chapter 4, Articles 1.1 and 1.2 regulate the Recycling Market Development Zone (RMDZ) Loan Program.

The proposed regulations will clarify the process of applying for RMDZ loans. The regulations also clarify the Board's authority to use RMDZ loan funds to facilitate more public and private lending to recycling-related businesses.

The regulations will not have a negative effect on any public entity or private business. In fact, according to the Agency-Wide Economic Analysis Unit at the Air Resources Board, the proposed regulations "would modify a very low-cost, high benefit program by increasing the level of potential participation." The regulations do this by making more financing available to recycling-related businesses.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 45-DAY PERIOD BETWEEN MAY 28, 2004 AND JULY 12, 2004.

The California Association of Recycling Market Development Zones (CARMDZ) was the only entity to provide comments on proposed revisions to the RMDZ loan regulations. The CARMDZ Board of Directors reviewed the draft regulations and discussed them at considerable length at its June 17, 2004 Board meeting in San Francisco. These comments and Board staff's responses are presented below. Please note that Board staff changed the regulations to accommodate CARMDZ comments numbers 1, 7 and 8.

CARMDZ Comment 1 on Article 1.1, Sections 17932(b) & 17934.1(b): "Though we had generally been neutral in the past regarding proposals to withdraw public infrastructure projects from eligibility for RMDZ loans, a majority of the current CARMDZ Board feels strongly that such projects should retain eligibility in the updated regulations. Since this issue was last discussed, many zones have renewed their commitment to the program or will soon be asked to do so, even as the state government takes more money from local government. Retaining/restoring such eligibility seems only fair, especially as there are several Brownfield redevelopment areas that could potentially utilize this incentive to attract recycling-based businesses. Many of these facilities have inadequate and non-compliant infrastructure systems, and with decreased federal funding for base reuse activities, RMDZ monies could be used to upgrade failing utility systems and attract recycling-based businesses. We would also point out that although the proposed draft deletes such eligibility in section 17934.1, subsequent language in the draft at 17935.1(c) refers to local government applications."

Board Staff Response 1: The commenter objects to the proposal to eliminate local government agencies from the list of eligible loan applicants. At the meeting on August 12-13, 2003, the Board decided to discontinue offering Recycling Market Development

Revolving Loans to public entities for infrastructure and capital improvement projects. The Board took this action for several reasons. First, the demand for such loans was virtually nil. The Board had only made one loan to a public entity since the inception of the RMDZ Revolving Loan Program (Loan Program) in 1993. Second, legal counsel at the Business, Transportation and Housing Agency's Infrastructure and Economic Development Bank suggested during a telephone conversation with Board staff that the Loan Program did not have the expertise or resources to make public loans. In that conversation, they recommended that specialized legal counsel, with expertise in government bond financing, was necessary to document loans to public entities.

In addition, the Board knew that a similar program was available to recycling-related businesses from another state agency. Currently, the Business, Transportation and Housing Agency provides an Infrastructure State Revolving Fund (ISRF) Program through the Infrastructure Bank, which provides low-cost financing to public agencies for a wide variety of infrastructure projects. ISRF Program funding is available in amounts ranging from \$250,000 to \$10,000,000, with loan terms of up to 30 years, at relatively low interest rates. Eligible applicants include any subdivision of a local government, including cities, counties, redevelopment agencies, special districts, assessment districts, joint powers authorities and non-profit corporations formed on behalf of a local government. Eligible project categories include city streets, county highways, state highways, drainage, water supply and flood control, educational facilities, environmental mitigation measures, parks and recreational facilities, port facilities, public transit, sewage collection and treatment, solid waste collection and disposal, water treatment and distribution, defense conversion, public safety facilities, and power and communications facilities.

Nonetheless, given the concern expressed by the California Association of Recycling Market Development Zones (CARMDZ), and finding the CARMDZ arguments credible and persuasive, staff is willing to retain the provision in regulations that allows for loans to public entities, while retaining the Board's discretion to set priorities.

CARMDZ Comment 2 on Article 1.1, Section 17931, 17932, and 17933: "We understand that the current, detailed Eligibility Guidelines cannot and should not be fully encoded in this section, and that is not our proposal. What we propose is that the Eligibility Guidelines be formally defined in the definitions section (17931) and at 17932, the Eligibility Guidelines be established as the most detailed references as to which types of projects are eligible to apply for and receive loan funds. Moreover, we suggest that at 17933(d), the clause should be modified to read "Satisfy additional priorities that are determined by the Board *'through the Eligibility Guidelines or other formal Board action'*", or something to that effect."

Board Staff Response 2: The commenter argues that the "Eligibility Criteria" (the commenter refers to these as "Eligibility Guidelines"), which the Board adopts from time to time pursuant to Section 17933(c), should be defined in Section 17931 and should be cited in Sections 17932 and 17933 as key criteria for determining what applicants are eligible to apply for loans. It should be noted that the adoption or modification of the matters identified above is undertaken only in noticed public meetings in which the public

and interested stakeholders are encouraged to participate. The Board believes the language proposed by the commenter is redundant and would restrict the Board's ability to respond to the changing needs of recycling businesses, as identified by Zone Administrators, Board staff and Board members.

CARMDZ Comment 3 on Article 1.1, Section 17934.3: "We would request that a "not to exceed" value of \$500 be specified in this section for loan application fees."

Board Staff Response 3: The commenter requests that a maximum loan application fee be established in this regulation. The statute in Public Resources Code section 42023.1(g) authorizes the Board to set the loan application fee at a level that is sufficient to cover the Board's cost of processing applications. By removing a limit to the fee, the regulations give the Board more flexibility to modify the fee as the Board's costs change. Nevertheless, the application fee would not be changed without public review of a scheduled agenda item at a public Board meeting. At such a meeting, interested parties would be able to express their views and concerns prior to adoption of a new fee. Accordingly, the Board chooses not to adopt the change proposed by the commenter.

CARMDZ Comment 4 on Article 1.1, Section 17935.1(a)(1): "We feel strongly that requiring loan applicants to provide 'certification of compliance with applicable laws and regulations to properly conduct and operate the business in California is not consistent with current practice, is overly broad, and is redundant to specific required items listed immediately before this 'catchall' clause. More clarification is needed by CIWMB."

Board Staff Response 4: The commenter argues that the requirement in the proposed regulation that all loan applicants certify that they are in compliance "with applicable laws and regulations to properly conduct and operate the business in California" is inconsistent with current Board practice, is overly broad and duplicates other listed requirements. The Board has always required loan applicants to certify compliance with applicable laws and regulations. The "Applicant's Certification," Exhibit G of the current loan application, was established in regulations prior to May 1997. Staff has never received any complaints from loan applicants regarding this requirement. It is a typical requirement of all commercial lenders.

Further, it is not overly broad. It is necessary that the Board, as a lender, receive adequate assurances that its borrowers are in compliance with all applicable laws and regulations. Indeed, the loan documents require ongoing compliance. Any borrower is responsible for knowing what laws and regulations apply to it and whether it is in compliance. The proposed amendment is not duplicative of other listed requirements. The list specifies "copies of business licenses and permits." The challenged language regarding compliance goes significantly further. It requires that the borrower have all the licenses and permits it is required to have, that it is in compliance with all other applicable laws and regulations, and that the borrower so certify to the Board in its application. Accordingly, the Board chooses not to adopt the change proposed by the commenter.

CARMDZ Comment 5 on Article 1.1, Section 17935.1(a)(5): “We are concerned that the language as drafted suggests that a Phase I and/or Phase II environmental site assessments/investigations may now be necessary for all loan applicants, regardless of whether the project involves a relocation or purchase of real estate. More clarification is needed by CIWMB. It may be useful to address this requirement in a separate item (6), clarifying the circumstances in which it can be applied.”

Board Staff Response 5: The commenter states a concern that the requirement in the loan application that the applicant supply information regarding public environmental reports and indemnification respecting hazardous waste or hazardous materials related to the project being undertaken with the loan or previous activities at the site will be interpreted to mean that Phase I and/or Phase II environmental assessments will be required for all loan applicants.

The requirement for disclosure of public environmental documents and indemnification from risk is meant to make potential applicants aware that they should investigate possible site contamination prior to submitting an application. This provision only applies to loans secured by deeds of trust on real estate. In such cases, staff obtains a Real Estate Environmental Assessment Report from a private subscription service. The report lists publicly available environmental reports and assessments on specific sites and adjoining properties. If the report shows that a contaminated site has not been completely cleaned, and a loan applicant cannot provide more current clean up documentation, staff may ask a loan applicant to do a Phase I Environmental Assessment. If this assessment finds current contamination that is not be cleaned up, staff may ask for a Phase II Environmental Assessment. If other acceptable existing documentation is available, that may be used instead of the Phase I or II Environmental Assessments. Listing a multitude of circumstances under which an Environmental Assessment would be required might limit staff’s ability to accept other documentation from a landowner or applicant or limit staff’s ability to ask for information, if a unique circumstance arises. Accordingly, the Board chooses not to adopt the change proposed by the commenter.

CARMDZ Comment 6 on Article 1.1, Section 17935.2(b): “This clause seems to state that if there is a project which does not involve a purchase of real estate, but which is partially or wholly collateralized by real estate, that the term of the loan can be 15 years rather than 10. If this is not how the regulations will be applied, more clarification is needed.”

Board Staff Response 6: The commenter seeks corroboration that the section in question allows the Board to make loans which are secured by real property but do not involve the purchase of real property up to 15 years in duration. The current language is clear. The commenter is correct that 15-year terms are available for loans secured by real property, even if the project does not involve the purchase of real estate.

The maximum term of a loan was extended to 15 years with the passage of AB 1364 (Migden) that took effect on January 1, 2000. The practice since then has been to offer

15-year terms on loans that are partially or wholly secured by deeds of trust. This is true whether or not the loan proceeds are used to purchase real estate.

CARMDZ Comment 7 on Article 1.1, Section 17935.4(b): “The language appears vague in that it seems to suggest that multiple applications are collected in batches and then “ranked in order...” before submittal to the loan committee, rather than on a “first come, first served” basis as soon as the application is deemed to be complete, which is how we perceive the process to work. Please clarify.”

Board Staff Response 7: The commenter suggests an alternative process for the submission of proposed loans to the Loan Committee. Instead of having staff assemble and rank a number of loans, the commenter recommends that loans be processed on a first come, first served basis. The Board accepts this change. It will speed the process for loan approval. The language in this section will be changed to clarify that applications are processed on a first come, first served basis.

CARMDZ Comment 8 on Article 1.2, Section 17939.1: “In the last sentence of this section, the third word should be changed from ‘will’ to ‘may’.”

Board Staff Response 8: The commenter notes that “will” should be changed to “may.” The Board concurs and will make this change. It is the intent of this section to authorize, but not require, the expenditure of Subaccount funds for the purpose of leveraging. Staff will make this change.

CARMDZ Comment 9 on New Section(s), with precise placement for discussion:
“CARMDZ proposes that the regulations require formal notification by CIWMB of all Zone Administrators, with a 30 day advance notice, setting a date and time for a CIWMB workshop in the event of proposed changes to changing Eligibility Guidelines, a new leveraging strategy, a bulk loan sale, or a change in the terms and conditions of the loan program. A workshop could be held at the Board offices in Sacramento or at a Zone Works training session.”

Board Staff Response 9: The commenter proposes the addition of a new section that would require the Board to hold a noticed public workshop with the Recycling Market Development Zone Administrators prior to Board consideration of any change in Eligibility Criteria, a new leveraging strategy, a bulk loan sale or changes in the loan program. The Board routinely conducts workshops at the request of stakeholders. It should be noted that the adoption or modification of the matters identified above is undertaken only in noticed public meetings in which the public and interested stakeholders are encouraged to participate. The Board often holds additional workshops for interested parties on a variety of topics, in Sacramento and elsewhere. Staff is always willing to consider requests to hold workshops at the home office or at a Zone Works training session at the request of Zone Administrators, or provide other forums for communication forums for communication between staff and Zone Administrators.

Staff will continue to use the three annual Zone Works workshops to share information with zone administrators and solicit their suggestions. Staff will also use e-mail and teleconferences and whatever other means might be available to solicit the advice and comments of zone administrators, so that zone administrators are notified as far in advance as possible of changes to the RMDZ Loan Program.

After the Board revised the proposed regulations to accommodate the wishes of Recycling Market Development Zone Administrators, no comments were received, either in writing or at the Board's public hearing on December 14-15, 2004.